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STATE EXAMINER DIRECTIVE 2021-3

Date: November 23, 2021

Subject: Premium Pay under the American Rescue Plan Act

Authority: IC 5-11

Application: This Directive applies to Counties, Cities, and Towns

From: Paul D. Joyce, CPA, State Examiner

The purpose of this directive is to prescribe audit procedures and expectations related to the provision of Premium Pay under the American Rescue Plan Act (ARPA). It has come to our attention that ARPA money is being used to provide Premium Pay in the form of "bonuses" to government employees. The ARPA and Interim Final Rule (IFR) define Premium Pay as an hourly rate rather than a bonus or stipend. The amount paid to government employees must comply with the definitions and limitations provided in the ARPA and IFR. Noncompliance may be reported as a federal finding and questioned cost in the audit report.

American Rescue Plan Act. According to the American Rescue Plan Section 603(c)(1)(B):

Funds may be used for costs incurred "to respond to workers performing **essential work** during the COVID-19 public health emergency by providing **premium pay** to **eligible workers** . . . that are performing such **essential work** . . ." (our emphasis)

Definitions. The following definitions apply to this category of expenditure:

Premium Pay. The term 'premium pay' means an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker. (ARPA Section 602(g)(3) and Section 603(g)(6))

Eligible Workers. The term 'eligible workers' means those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each chief executive officer of a metropolitan city, nonentitlement unit of local government, or county may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county. (ARPA Section 603(g)(2))

Essential Work. The term "essential work" means work that: (1) Is not performed while teleworking from a residence; and (2) Involves: (i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or (ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work. (IFR, Federal Register Vol. 86 No. 93 p. 26798)

Essential Critical Infrastructure Sectors. The term Essential Critical Infrastructure Sectors includes ". . . any work performed by an employee of a State, local, or Tribal government . . ." (IFR, Federal Register Vol. 86 No. 93 p. 26820)

Limitations. Payments for premium pay are subject to certain limitations:

1. **Maximum.** "The ARPA recognizes this by defining premium pay to mean an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker." (IFR, Federal Register Vol. 86 No. 93 p. 26798)
2. **Work from Home.** "A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence." (IFR, Federal Register Vol. 86 No. 93 p. 26798)
3. **Comparison to Average Annual Wage.** "If premium pay would increase a worker's total pay above 150 percent of their residing state's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, or their residing county's average annual wage, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the State, local, or Tribal government must provide Treasury and make publicly available, whether for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency." (IFR, Federal Register Vol. 86 No. 93 p. 26798)

Elected Officials

Indiana statutes regarding the compensation of elected officials must be followed if ARPA money is used to provide Premium Pay to elected officials.

For Counties, IC 36-2-5-13(c) states, "Except as provided in subsection (d), the compensation of an elected county officer may not be changed in the year for which it is fixed."

For Cities, IC 36-4-7-2(c) states, "The compensation of an elected city officer may not be changed in the year for which it is fixed nor may it be reduced below the amount fixed for the previous year."

For Towns, IC 36-5-3-2(c) states: "The compensation of an elected town officer may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year."

Based on these statutes, it is our audit position that elected officials for counties, cities, and towns are not eligible for Premium Pay in 2021. If Premium Pay is to be provided to elected officials in 2022, then the amount of Premium Pay must be included in the budget and salary ordinance for 2022 adopted or amended by December 31, 2021.

Consider that for cities and towns the compensation of an elected official may not be reduced below the amount fixed for the previous year.

Audit Expectations

During an audit, we will be reviewing the following items regarding Premium Pay:

1. The amount of Premium Pay provided to an employee must be supported by an hourly rate for hours worked; all calculations must be maintained for audit.
2. Documentation must be available for audit showing that Premium Pay provided to an employee was for hours worked with regular in-person interaction or physical handling of items, rather than telework from a residence.
3. Documentation must be available for audit to show that the amount of Premium Pay provided to an employee did not exceed \$13 per hour or the maximum of \$25,000 per worker.
4. If the amount of premium pay exceeded the 150% of the State or County average annual wage, the written justification for that payment must be provided.
5. Premium Pay provided to employees must comply with Indiana statute and be included in the salary ordinance or amended salary ordinance.
6. Premium Pay provided to an elected official must be included in the budget and salary ordinance adopted in the previous year.
7. Written internal control procedures and evidence of those internal control procedures must be established to provide reasonable assurance that the financial, compliance and reporting objectives for ARPA funds will be achieved.
8. The procedures outlined all State Examiner Directives and related memorandums must be followed.

Other Considerations


This directive discusses the provision of Premium Pay to employees based on ARPA Section 603(c)(1)(B) and guidance issued by the U.S. Treasury as of the date of this directive. There may be other provisions in ARPA which could be used to provide additional compensation to employees, such as the provision of government services to the extent of the reduction of revenue in Section 603(c)(1)(C). The provisions in the ARPA and applicable Indiana statutory provisions must be followed. If ARPA money is used to provide premium pay to elected officials, the corresponding Indiana statutes regarding the compensation of elected officials will apply.

If you have any concerns about the provision of Premium Pay, please contact the Directors for your unit:

Counties: Lori Rogers or Ricci Hofherr counties@sboa.in.gov
Cities and Towns: Todd Caldwell or Susan Gordon cities.towns@sboa.in.gov

You must maintain documentation and explanation that the premium pay meets the definitions of the ARPA and the IFR. Any payments that are not in compliance with the ARPA or IFR may be identified as a federal finding and questioned cost in the audit report.

This Directive may be amended from time to time and may be rescinded at any time in writing by the State Examiner or Deputy State Examiner.


Paul D. Joyce, CPA
State Examiner